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SERVICE DATE – AUGUST 13, 2008

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35151]

GNP Rly Inc.—Modified Rail Certificate—In Snohomish County, WA

On July 14, 2008, GNP Rly Inc. (GNP)<sup>1</sup> filed an application for a modified certificate of public convenience and necessity under 49 CFR 1150, Subpart C, Modified Certificate of Public Convenience and Necessity (modified certificate), to lease and operate a segment of a line of railroad in the City of Snohomish, Snohomish County (County), WA. The segment is owned by the County and extends from milepost 39.1 to milepost 39.3, a distance of approximately 0.2 miles. On August 7, 2008, Mayor Randy Hamlin, on behalf of the City of Snohomish (City), filed a letter in response to GNP's application.

The segment is part of a line of railroad authorized to be abandoned pursuant to a decision issued by the Board's predecessor agency, the Interstate Commerce Commission, in Burlington Northern Railroad Company—Exemption—Abandonment in

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<sup>1</sup> GNP was previously known as Altac Terminals Washington, Inc. GNP changed its corporate name through an amendment to its articles of incorporation filed with the Secretary of State of the State of Washington on September 10, 2007.

Snohomish County, WA, Docket No. AB-6 (Sub-No. 280X) (ICC served Mar. 12, 1986).<sup>2</sup> GNP states that the County acquired the segment on October 20, 1992.<sup>3</sup>

The County leased the segment to GNP by agreement dated May 23, 2008. GNP states that it will lease the segment for an initial term beginning January 1, 2008, and ending December 31, 2039, with a 31-year renewal term. GNP states that the segment will be used for the reconstruction of 350 yards of sidings and service tracks for storage and maintenance of locomotives and cars and as a base of operations for trains, motive power, and rolling stock to be operated by GNP. GNP states that it will also provide commuter rail service and common carrier freight rail service over the segment as provided in its agreement with the County.<sup>4</sup> GNP states that the segment at issue here is the first small piece of a larger segment that GNP hopes to operate.

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<sup>2</sup> The line of railroad approved for abandonment pursuant to that decision extended from milepost 39.00 to milepost 47.11, a distance of approximately 8.11 miles.

<sup>3</sup> We note that the County does not appear to own the segment covering milepost 39.0 to milepost 39.1 of the line.

<sup>4</sup> The rail line involved in Docket No. AB-6 (Sub-No. 280X) connects with a 0.99-mile line of railroad owned by BNSF Railway Company (BNSF), between milepost 38.01 and milepost 39.0 in Snohomish (BNSF line). The BNSF line was the subject of a notice of exemption to abandon and discontinue service in BNSF Railway Company—Abandonment Exemption—In Snohomish County, WA, STB Docket No. AB-6 (Sub-No. 422X) (STB served July 2, 2004). By decision served on December 18, 2007, in STB Docket No. AB-6 (Sub-No. 422X), the consummation deadline for BNSF's abandonment of the line at issue in that proceeding was extended until December 31, 2008. GNP states that BNSF has not consummated the abandonment of the BNSF line and that the line may be acquired by a public authority. However, by subsequent letter received on July 21, 2008, BNSF advised the Board that it has consummated the abandonment of the BNSF line between milepost 38.25 and milepost 39.00, and that the remainder of the line (between milepost 38.01 and milepost 38.25) would be retained for railroad purposes.

The City requests that the Board deny GNP's application. The City opposes passenger rail operations on the segment, citing safety and noise concerns. In particular, the City complains about the negative impact rail service would have on several public facilities located near the segment, the danger to pedestrians and automobiles at the 11 crossings along the segment, and the close proximity of the segment to many new multifamily residences. Further, the City argues that the safety of the Snohomish River Bridge has not been evaluated. Finally, the City argues that there is no apparent need for additional commuter rail service.

The rail segment qualifies for a modified certificate of public convenience and necessity, which was designed to promote the continuation of rail service over marginal lines. See Common Carrier Status of States, State Agencies, 363 I.C.C. 132, aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982).

Although the County supports the proposal, the City does not, and the City raises safety issues that it believes could arise if request rail service were to develop. It is not at all clear that the more extensive proposal, of which this proposal is a part, will materialize, in that GNP does not now have, and may never obtain, the ability to operate over any track beyond the 0.2-mile segment at issue here. Thus, the safety issues that the City raises may never arise as a result of the permissive authority sought here. In any event, any holder of a modified certificate must operate in accordance with all Federal Railroad Administration (FRA) safety regulations. The FRA regulations cover such areas as grade crossings, noise, and the safety of tracks and bridges. Thus, the City's concerns, should GNP's plans come to fruition, can be addressed under the appropriate regulations.

Pursuant to the Consolidated Appropriations Act, 2008, Pub. L. No. 110-161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting and shredding). The term “solid waste” is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

This notice will be served on the Association of American Railroads (Car Service Division) as agent for all railroads subscribing to the car-service and car-hire agreement: Association of American Railroads, 50 F Street, N.W., Washington, DC 20001; and on the American Short Line and Regional Railroad Association: American Short Line and Regional Railroad Association, 50 F Street, N.W., Suite 7020, Washington, DC 20001.

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Decided: August 12, 2008.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan

Acting Secretary